Contractors Excavating, Inc. *and* **Construction, Production & Maintenance Laborers' Union, Local No. 383, Laborers' International Union of North America, AFL–CIO; International Union of Operating Engineers, Local No. 428, AFL–CIO; Arizona State District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL–CIO; Construction & Joiners of America, AFL–CIO; Construction, Building Materials & Miscellaneous Drivers, Teamsters Local Union No. 83, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Case 28–CA–7345

14 June 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

Upon a charge filed by the Unions 18 February 1983 the General Counsel of the National Labor Relations Board issued a complaint 5 April 1983 against the Company, the Respondent, alleging that it had violated Section 8(a)(1) and (5) of the National Labor Relations Act. The General Counsel properly served copies of the charge and complaint on the Company. Subsequent to service of the complaint, the Respondent requested from the Regional Director for Region 28, and did in fact receive from the Regional Director, five separate extensions of time in which to file an answer to the complaint. The latest extension of time in which the Respondent could file an answer to the complaint expired 12 July 1983. However, the Respondent refused and failed to file an answer to the complaint with the Regional Director by 12 July 1983. On 9 September 1983 the General Counsel by letter advised the Respondent that it had failed to file a timely answer to the complaint as required by the Board's Rules and Regulations and informed the Respondent of the consequences of its failure to file a timely answer. The General Counsel requested the Respondent to file an answer to the complaint no later than 16 September 1983 and indicated that if the Respondent failed to file an answer by that date the General Counsel would recommend that a Motion for Summary Judgment be filed with the Board. On 21 September 1983 the Regional Director received an unsigned and undated document entitled "Answer to Complaint," which purported to be the Respondent's answer. On 10 November 1983 the General Counsel by letter notified the Respondent that its answer was not signed and dated, and thus did not conform to Section 102.21 of the Board's Rules and Regulations.[1] The General Counsel informed the Respondent that Section 102.21 of the Board's Rules and Regulations allowed for striking an answer if it were not signed. The letter also indicated that a copy of Sections 102.20 and 102.21 of the Board's Rules and Regulations were being enclosed with the letter for the Respondent's convenient reference. The General Counsel advised the Respondent that unless Region 28 received a signed and dated answer by 17 November 1983 the General Counsel would move before the Board to strike the Respondent's answer and to grant a Motion for Summary Judgment in this proceeding. It appears that the Company failed to file an answer in conformance with the General Counsel's request.

On 23 November 1983 the General Counsel filed a Motion for Summary Judgment. On 28 November 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Because not all parties had received the order transferring the proceeding to the Board and the Notice to Show Cause issued 28 November 1983, the Board issued additional copies of its order and notice and extended the due date for the response to the Notice to Show Cause. The Board's order transferring proceeding to the Board and Notice to Show Cause was thereafter personally served on the Respondent's president at the Respondent's business address.[2] The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Section 102.21 of the Board's Rules and Regulations provides, "[a] party who is not represented by an attorney shall sign his answer and state his address. . . . If an answer is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and

[1] The General Counsel also informed the Respondent that Sec. 102.21 required the Respondent to serve a copy of the answer on the other parties to this proceeding.

[2] This finding is based on the unopposed assertion contained in an affidavit filed with the Board.

false and the action may proceed as though the answer had not been served." The undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated 10 November 1983, notified the Company that unless a timely and adequate answer to the complaint which conformed to the Board's Rules and Regulations was received by 17 November 1983, a Motion for Summary Judgment would be filed. No answer was forthcoming, and such a motion was filed.

With regard to the Respondent's "answer," we shall strike it. After the Respondent had received the charge and complaint, it was repeatedly warned and advised that unless a proper answer was filed with the Regional Director for Region 28, a motion would be filed with the Board for entry of an order based on the undenied allegations of the complaint. The Respondent did not file a signed answer.

The Board has the authority under the Act to establish reasonable procedural rules regarding the time and manner of filing an answer to a complaint. See Section 6 of the Act. Pursuant to this provision, the Board has promulgated rules regarding the filing of an answer to a complaint, including the requirement that such an answer be filed within a definite period and that it be signed.

Accordingly, we find that, pursuant to the authority granted the Board under the Act, the Board's rules governing the filing of answers to a complaint are valid and have the force and effect of law. We affirm our rules that, if a party charged with an unfair labor practice in a complaint does not file an answer within the time and in the manner prescribed by such rules, all allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board, and judgment may be rendered on the basis of the complaint alone.[3] We find that the Respondent's purported answer is improper, and does not comply with the requirements of Section 102.21 of the Board's Rules and Regulations. In the absence of good cause being shown for the failure to file a proper timely answer, we will strike the answer.

As the Respondent has not filed an answer acceptable under the Board's Rules and Regulations, and in the absence of good cause being shown for the failure to do so, we grant the General Counsel's motion for Summary Judgment.[4]

[3] *Liquid Carbonic Corp.*, 116 NLRB 795, 797 (1956).

[4] In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest the General Counsel's factual allegations or legal conclusions. Thus, the Chairman regards this proceeding as essentially a default judgment which is without precedential value.

On the entire record the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Company is an Arizona corporation, engaged as a pipeline construction contractor in the building and construction industry at its facility in Phoenix, Arizona, where in the 1-year period preceding issuance of the complaint, the Respondent purchased and received business goods and materials valued in excess of $50,000 directly from suppliers located in States of the United States other than the State of Arizona. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following units of employees of the Respondent constitute units appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

(a) All carpenter employees as described in articles 1 and 2 of the current Associations Agreement[5] between the parties, effective from 22 March 1982 through 31 January 1986.

(b) All laborer employees as described in article 1 and 2 of the parties' most recent collective-bargaining agreement, the Arizona Heavy and Highway Labor Agreement (the Arizona Agreement), effective by its terms 7 July 1982 through 31 January 1986.

(c) All operating engineers as described in articles 1 and 2 of the current Arizona Agreement between the parties, effective by its terms from 7 July 1982 through 31 January 1986.

(d) All teamster employees as described in articles 1 and 2 of the current Arizona Agreement between the parties, effective by its terms from 7 July 1982 through 31 January 1986.

At all times material herein, the respective Charging Party Unions have been the designated exclusive bargaining representatives of the Respondent's employees in the units described above, respectively, and, by virtue of Section 9(a) of the Act, have been and are the exclusive representatives of the Respondent's employees in the respective units described above.

[5] The collective-bargaining agreement between the Arizona Building Chapter, Associated General Contractors, Arizona Chapter, Associated General Contractor (the Associations) and the Carpenters Union, which the Respondent agreed to comply with and be bound by, is denoted the Associations Agreement.

About 3 December 1982 and continuing to date, the Respondent has failed and refused to recognize and to bargain with each of the Unions as the respective exclusive bargaining representative of the Respondent's employees in the respective units represented by the Unions with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Since about 3 December 1982, and continuing to date, the Respondent has repudiated and thereafter failed and refused to adhere to and to abide by the terms of the respective collective-bargaining agreements in effect between the Respondent and the Unions by, inter alia, unilaterally changing the wage rates of unit employees; ceasing to make contributions on behalf of employees to the respective fringe benefit trust funds covering the employees; and discontinuing its use of the Unions' respective hiring halls to procure its respective unit employees. Since about 3 December 1982 and continuing to date, the Respondent has negotiated directly with individual unit employees, bypassing the Unions, and offering its respective unit employees employment with the Respondent at wages, hours, and other terms and conditions of employment other than those provided for in the respective collective-bargaining agreements with the Unions. About the first week of December 1982 the Respondent by its supervisor and agent Michael J. Wimberg interrogated its employees concerning their union activities and threatened employees with discharge if they solicited the aid and assistance of the Unions.

We find that by the conduct described above the Respondent has refused to bargain collectively with the Unions as the exclusive representatives of the employees in the appropriate units, respectively, and that by such refusal the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. We further find that the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act and that by such conduct has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Contractors Excavating, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Arizona State District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO; Construction, Production & Maintenance Laborers' Union, Local No. 383, Laborers' International Union of North America, AFL-CIO; International Union of Operating Engineers, Local No. 428, AFL-CIO; and Construction, Building Materials & Miscellaneous Drivers, Teamsters Local Union No. 83, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America are labor organizations within the meaning of Section 2(5) of the Act.

3. (a) All carpenter employees as described in articles 1 and 2 of the current Associations Agreement between the parties, effective from 22 March 1982 through 31 January 1986, constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

(b) All laborer employees described in articles 1 and 2 of the parties' most recent collective-bargaining agreement, the Arizona Heavy and Highway Labor Agreement (the Arizona Agreement), effective by its terms 7 July 1982 through 31 January 1986, constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

(c) All operating engineers as described in articles 1 and 2 of the current Arizona Agreement between the parties, effective by its terms from 7 July 1982 through 31 January 1986, constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

(d) All teamster employees as described in articles 1 and 2 of the current Arizona Agreement between the parties, effective by its terms from 7 July 1982 through 31 January 1986, constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

4. By failing and refusing to recognize and to bargain with each of the Unions as the respective exclusive bargaining representative of its employees in the respective units with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment; by repudiating and refusing to adhere to and abide by the terms of the respective collective-bargaining agreements in effect between the Respondent and the Unions; by, inter alia, unilaterally changing wage rates of employees, ceasing to make contributions on behalf of said employees to respective fringe benefit trust funds covering employees, and discontinuing its use of the Unions' respective hiring halls to procure respective unit employees; and by negotiating directly with individual unit employees, bypassing the Unions, and offering respective unit employees employment at wages, hours, and other terms and conditions of employment other than those provided for in the respective collective-bargaining agreements with the Unions, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

5. By interrogating its employees concerning their union activities and by threatening employees with discharge if they solicit the aid and assistance of the Unions, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to recognize and bargain with each of the Unions, we shall order that the Respondent, on request, bargain collectively with the Unions as the exclusive bargaining representatives of the employees in the appropriate units, respectively, with respect to wages, hours, and other terms and conditions of employment. Having found specifically that the Respondent repudiated and failed and refused to adhere and abide by the terms and conditions of the respective collective-bargaining agreements in effect between the Respondent and the Unions by, inter alia, unilaterally changing wage rates of employees, ceasing to make contributions on behalf of said employees to fringe benefit trust funds, and discontinuing use of the Unions' respective hiring halls to procure its respective unit employees, we shall order that the Respondent restore the status quo ante and give effect to and comply with the terms and conditions set forth in said agreements. We shall also order the Respondent to make employees whole for any monetary losses they may have suffered as a result of the Respondent's refusal to comply with the provisions of the contract, retroactive to 3 December 1982, with interest provided for in *Florida Steel Corp.*, 231 NLRB 651 (1977).[6] We shall also order the Respondent to make contributions to the respective fringe benefit trust funds covering the employees,[7] and to use the Unions' respective hiring halls to procure its respective unit employees. We shall also order the Respondent to cease and desist from negotiating directly with individual unit employees, bypassing the Unions, and offering respective unit employees employment with the Respondent at wages, hours, and other terms and conditions of employment other than those provided in the respective collective-bargaining agreements with the Unions. We shall further order the Respondent to cease and desist from interrogating employees concerning their union activities, and from threatening employees with discharge if they solicit the aid and assistance of the Unions.

ORDER

The National Labor Relations Board orders that the Respondent, Contractors Excavating, Inc., Phoenix, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to abide by the terms and conditions set forth in collective-bargaining agreements with the Unions.

(b) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with (1) Arizona State District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO; (2) Construction, Production & Maintenance Laborers' Union, Local No. 383, Laborers' International Union of North America, AFL-CIO; (3) International Union of Operating Engineers, Local No. 428, AFL-CIO; and (4) Construction, Building Materials & Miscellaneous Drivers, Teamsters Local Union No. 83, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive bargaining representatives of its employees in the following appropriate units, respectively:

(1) All of the Respondent's carpenter employees as described in articles 1 and 2 of the current Associations Agreement between the parties, effective from 22 March 1982 through 31 January 1986.

(2) All of the Respondent's laborer employees as described in articles 1 and 2 of the current Arizona Agreement between the parties, effective by its terms from 7 July 1982 through 31 January 1986.

(3) All of the Respondent's operating engineers as described in articles 1 and 2 of the current Arizona Agreement between the parties, effective by its terms from 7 July 1982 through 31 January 1986.

(4) All of the Respondent's teamster employees as described in articles 1 and 2 of the current Arizona Agreement between the parties, by its terms from 7 July 1982 through 31 January 1986.

(c) Unilaterally changing the wage rates of employees, ceasing to make contributions on behalf of employees to fringe benefit trust funds covering employees, and discontinuing use of the Unions' hiring halls to procure employees.

[6] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Ogle Protection Service*, 183 NLRB 682 (1970).

[7] Any interest applicable to such payments shall be paid in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

(d) Negotiating directly with individual unit employees, bypassing the Unions, and offering unit employees employment at wages, hours, and other terms and conditions of employment other than those provided for in the collective-bargaining agreements with the Unions.

(e) Interrogating its employees concerning union activities.

(f) Threatening employees with discharge if they solicit the aid and assistance of the Unions.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) On request, bargain with the above-named labor organizations as the exclusive representatives of employees in the aforesaid appropriate units, respectively, with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(b) Honor the terms and conditions of employment set forth in the collective-bargaining agreements with the above-named labor organizations.

(c) Make whole all employees in the above-described appropriate units in the manner set forth in the section of this decision entitled "Remedy" by reimbursing them, with interest, for any loss of wages they may have suffered as a result of the Respondent's failure, since about 3 December 1982, to abide by the terms of the collective-bargaining agreements regarding rates of pay and wages.

(d) Make whole all employees by making payments to the respective fringe benefit trust funds covering the employees as set forth in the section of this decision entitled "Remedy."

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all the records necessary or useful in checking compliance with this Order.

(f) Post at its facility in Phoenix, Arizona, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to abide by the terms and conditions of employment set forth in the collective-bargaining agreements with Contractors Excavating, Inc. and Arizona State District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO; Construction, Production & Maintenance Laborers' Union, Local No. 383, Laborers' International Union of North America, AFL-CIO; International Union of Operating Engineers, Local No. 428, AFL-CIO; and Construction, Building Materials and Miscellaneous Drivers, Teamsters Local Union No. 83, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America with respect to our employees in the following appropriate units:

> All carpenter employees as described in Articles 1 and 2 of the current Associations Agreement between the parties effective from 22 March 1982 through 31 January 1986.
>
> All laborer employees as described in Articles 1 and 2 of the current Arizona Agreement between the parties, effective by its terms 7 July 1982 through 31 January 1986.
>
> All operating engineers as described in Articles 1 and 2 of the current Arizona Agreement between the parties, effective by its terms from 7 July 1982 through 31 January 1986.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with the above-named Unions in the units described above.

WE WILL NOT unilaterally change the wage rates of employees, cease to make contributions on behalf of employees to fringe benefit trust funds

[8] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

covering employees, or discontinue use of the Unions' hiring halls to procure our employees.

WE WILL NOT negotiate directly with individual unit employees, bypass the Union, or offer respective unit employees employment with us at wages, hours, and other terms and conditions of employment other than those provided for in the collective-bargaining agreement with the Unions described above.

WE WILL NOT interrogate employees concerning their union activities.

WE WILL NOT threaten employees with discharge if they solicit the aid or assistance of the Unions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the above-named labor organizations as exclusive representatives of employees in the respective bargaining units described above with respect to rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL restore the employees' terms and conditions of employment as they existed prior to the unilateral changes specified above.

WE WILL make whole all employees in the appropriate units by reimbursing them and making payments to the respective fringe benefit trust funds, with interest, for any losses ensuing from our unilateral changes.

CONTRACTORS EXCAVATING, INC.